No. 83-1707

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In the Supreme Court

OF THE

United States

OCTOBER TERM 1983

R. ROTHMANN, J. WAGNER, A. PETERSON, G. VALENTINE, J. O'LOUGHLAN, S. VEAL, B. PETER, S. BAHNSEN, J. ALAVEKIOS, T. CURTIS, J. FERNANDEZ, K. FORISTER, W. BLISS, L. HATHON, S. DEPERSIS, D. DIAZ, C. KELLY, E. REED, W. E. JOHNSON, S. E. LITTLEFORD, R. B. THOMAS, J. WALKER, R. WHITE, and MASTERS, MATES AND PILOTS TRUST FUNDS,
Petitioners,

vs.

M.V. RESOLUTE, *in rem*, and COAST LINE ASSOCIATES, *in personam*, WEST WINDS, INC., NAUTICAL ELECTRIC INC., and SCHOU-GALLIS CO., LTD.
Respondents.

SUPPLEMENTAL BRIEF ON PENDING PETITION FOR CERTIORARI PURSUANT TO U.S. SUPREME COURT RULE 22.6

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Come now petitioners and, pursuant to U.S. Sup. Ct. Rule 22.6, 28 U.S.C., hereby file this supplemental brief to call the Court's attention to its decision in *Schneider Moving & Storage Co. v. Loran W. Robbins, et al.*, Nos. 82-1860, 82-186, ... U.S. ...., 52 U.S. Law Week 4476, 115 LRRM 3641 decided on April 18, 1984, after the petition herein had been completed and was mailed to the Clerk of this Court for filing.

In the petition it was pointed out that the failure of respondent employer to make its contributions to the Trust Funds decreases the value of the funds and thereby increases the likelihood that the petitioners-crew members would fail to receive the benefits due them and would thereby suffer a "loss of benefits". Petition for Writ of Certiorari, p. 9-10. In support of this argument petitioners relied in part on this Court's decision in *Lewis v. Benedict Coal Co.*, 361 U.S. 495 (1960) *Ibid* p. 9.

In its recent *Schneider Moving* decision, this Court determined that the trustees of multi-employer trust funds, which, like Petitioner-Trust Funds here, provide employees with pension and welfare benefits (52 U.S. Law Week 4477 nn. 6, 7, 8) may seek judicial enforcement of the trust terms against a participating employer without first submitting to arbitration an underlying dispute over the meaning of a term in the employer's collective bargaining agreement.

In reaching this result the Court pointed out that

> These are multiemployer trust funds. Each of the participating unions and employers has an interest in the prompt collection of the proper contributions from each employer. *Any diminution of the fund* caused by the arbitration requirements of a particular employer's collective-bargaining agreement *would have an*

adverse effect on the other participants.[17] The enforcement mechanisms established in the trust agreements protect the *collective interests of the parties from the delinquencies of individual employers* by allowing the trustees to seek prompt judicial enforcement of the contribution requirements.

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[17]Cf. *Lewis v. Benedict Coal Co.*, 361 U.S at 469 ("[U]nlike the usual third-party beneficiary contract, this is an industry-wide agreement involving many promisors. . . . The application of the suggested [presumption] to this contract would require us to assume that the other [employers] . . . were willing to risk the threat of diminution of the fund in order to protect those of their number who might have become involved in local labor difficulties.").

..... U.S. ....., 52 U.S. Law Week 4478 (Court's footnote; emphasis supplied).

This Court should adopt the same approach to the instant case, in which the Petitioner-MMP Trust Funds are also multi-employer funds. This Court should not permit to stand an interpretation of the Ship Mortgage Act or an application of the admiralty law's preferred lien for seaman's compensation which would result in a diminution of the multi-employer trust funds in this case. Petitioners here should be protected from the delinquencies of an individual employer as were the Trustees in *Schneider Moving*. The Court should not assume that other employers in the MMP bargaining unit are willing to risk the threat of the diminution of the Funds in order to protect the creditors of those of their number who might have become involved in financial difficulties.

The admiralty and maritime considerations adverted to in the petition as the basis for the imposition of a maritime lien in this case are equally as important as the con-

siderations which prompted this Court to reach the decision it did in *Schneider Moving*.[1]

San Francisco, California
May 10, 1984

Respectfully submitted,

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[1] *Schneider Moving*, like this case, involved an effort to collect the contributions. Neither of these cases is like *Morrison-Knudsen Constructon Co. v. Director, OWCP*, 416 U.S. , 78 L.Ed. 2d 194 (1983) which involved only the question of whether the contributions, having been collected, were to be regarded as wages for computing compensation benefits under the Longshore and Harborworkers Compensation Act.